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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc. and
BellSouth Long Distance for
Provision of In-Region, InterLATA Services in
Georgia and Louisiana

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CC Docket No. 01-277

REPLY COMMENTS
OF

PACWEST TELECOMM, INC. AND US LEC CORP.

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TABLE OF CONTENTS

Summary	1
I. GRANTING BELLSOUTH’S APPLICATION IS NOT IN THE PUBLIC INTEREST	2
A. The State of Local Competition	2
B. The 271 Process Is Becoming Increasingly Mechanistic and Diluted	4
C. The Public Interest Standard As a Check on Anticompetitive Practices	9
II. PERVASIVE PROVISIONING AND MAINTENANCE / REPAIR ISSUES WITH HIGH CAPACITY FACILITIES SUGGEST ENDEMIC PROBLEMS	11
III. BELLSOUTH FAILS TO SATISFY CHECKLIST ITEM 2 IN REGARD TO OSS	15
A. Functionality and Capacity of OSS	16
B. Pre-Ordering / Ordering	20
C. The Florida Evaluation Will Provide A Better Insight Into BellSouth’s OSS	24
IV. BELLSOUTH FAILS TO PROVIDE ADEQUATE NUMBER PORTABILITY IN VIOLATION OF CHECKLIST ITEM 11	27
V. CONCLUSION	30

SUMMARY

The United States Department of Justice (“Department of Justice”) concurs with the assessment that Commentors made in their initial Comments, *i.e.*, that BellSouth’s application for Section 271 authority does not merit a passing grade. The Department of Justice concluded in its Evaluation that, “it is not in a position to support the application on the present record.”¹ In particular, the BellSouth application has a fatal combination of deficient performance, unreliable performance data, and an extensive reliance on promises of future compliance.² Each of these problems in and of itself would provide a sufficient basis to reject this application; in combination, they mandate denial.

This is BellSouth’s fourth attempt to garner Section 271 authority in one of its states in a period of four years. It appears that the Georgia and Louisiana Commissions were willing to overlook performance deficiencies and rely on promises of future compliance. The Section 271 process is a stringent test, however. Congress, in crafting the test, did not seek to reward applicants merely because they have been trying for many years. As Commissioner Copps has stated:

In Section 271, however, Congress did not provide us with a balancing test, where we look to the quality of a BOC's overall effort to meet its responsibilities. Congress insisted, as the Commission has noted in previous Orders, that a BOC must meet *each and every checklist item* before the Commission grants permission to offer interLATA service. Additionally, we must not forget that the granting of an application must be in the public interest.³

¹ CC Docket No. 01-277, Evaluation of the United States Department of Justice at 2 (Nov. 6, 2001) (“*DoJ Evaluation*”).

² *See Id.*

³ *Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Dissenting Opinion of Commissioner Michael J. Copps at 1 (September 19, 2001).

It is particularly important that the Commission remain extra-vigilant in review of this application because BellSouth undoubtedly will attempt to rely on this application as a basis for other grants if it obtains such approval. Unlike in New York and Texas, where exhaustive reviews of the applications by the respective state commissions could give the Commission some comfort, it appears that the most exhaustive review of Bell South's performance is taking place in another state.

The Florida Public Service Commission appears to be conducting a more stringent review especially in regard to OSS. Thus, the Commission should not countenance any promises of future compliance for this application, and should ensure that all problems are resolved now. In Pennsylvania, the Commission was willing to rely on Verizon's promises of future compliance in regard to billing because Verizon had "demonstrated that problems seen in several prior applications can be fixed."⁴ BellSouth has not made such a demonstration and it would be hard-pressed to make such a showing, given the lingering OSS problems that still remain four years later.

BellSouth's failures in regard to OSS are well-documented in this proceeding. The Department of Justice did not need to look beyond these problems to determine that the application does not pass muster. There are performance issues in other areas, however, that demonstrate that BellSouth's failures in regard to OSS are only a part of BellSouth's failure, or unwillingness, to open up its markets. BellSouth's poor performance in regard to provisioning and maintenance/repair of high capacity facilities, both via its special access tariff and as UNEs, replicates the same themes of poor service quality and responsiveness that permeate BellSouth's application. High capacity

⁴ *Id.*

facilities represent the future of telecommunications by being able to support not only voice, but a wide array of advanced services. The disparities in providing these facilities mean that competition in this vital area will be stunted. The Commission should not turn a blind eye to BellSouth's failure in these areas.

One thing it appears that BellSouth has learned in the past four years is how to maneuver performance data and metrics to mask poor performance. This record is replete with evidence as to unreliable performance data and the inability of BellSouth's metrics to accurately track performance. Yet BellSouth claims it is in compliance with the checklist. This is why the Commission must look beyond the data and purported results, and determine if BellSouth's performance meets the qualitative and quantitative requirements of the Act. The Commission must utilize a revitalized public interest standard and determine if the markets in Georgia and Louisiana are irreversibly open to competition.

It is important given the imperiled state of local competition in these two states that the Commission not allow premature interLATA entry for BellSouth into these markets. A premature grant could establish a foundation for a return to the pre-divestiture telecommunications market instead of the vibrant local markets that Section 271 was designed to play a large role in creating. BellSouth's conduct in particular does not warrant a finding that its application is in the public interest. Its anticompetitive winback practices, coupled with the anticompetitive practices documented by Commentors in this proceeding, demonstrate that the lack of competition in these markets is due to BellSouth's practices. BellSouth should not be rewarded for its anticompetitive

performance; instead its application should be sent back to the proverbial drawing board until the numerous identified issues are resolved.

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REPLY COMMENTS
OF
PACWEST TELECOMM, INC. AND US LEC CORP.

PacWest Telecomm, Inc. ("PacWest"), and US LEC Corp. ("US LEC") submit these reply comments concerning the above-captioned Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance ("BellSouth") for Provision of In-Region, InterLATA Services in Georgia and Louisiana filed October 2, 2001 ("Application").⁵ For the reasons stated herein, the Federal Communications Commission ("Commission") should deny the Application.

⁵ Comments Requested on the Joint Application By BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana, Public Notice, CC Docket No. 01-227, DA 01-2286, released October 2, 2001.

I. GRANTING BELL SOUTH'S APPLICATION IS NOT IN THE PUBLIC INTEREST

The Commentors reiterate their call for application of a revitalized public interest standard in regard to BellSouth's application.⁶ Only through application of such a standard can the Commission meet its statutory mandate to ensure that local markets are irreversibly open to competition.

A. The State of Local Competition

It is remarkable what a rosy picture of competition BellSouth paints in the Georgia and Louisiana markets when the reality of those markets presents a much different picture. Both AT&T and Sprint present very sobering portrayals of the state of the CLEC industry and in Georgia and Louisiana in particular.⁷ As AT&T notes, "many of the facilities-based CLECs that BellSouth identifies as its competitors in Georgia and Louisiana, have gone, or are going, out of business or are otherwise in financial distress."⁸

In the face of this reality, BellSouth asserts that competition is "vibrant."⁹ Commenting parties have noted how BellSouth overstates the level of competition in those states.¹⁰ As Sprint astutely observes:

[n]otwithstanding the competitors' red ink flooding the Commission's doorsteps, BellSouth would have this agency believe that it has lost more than 16% of its overall local service business in Georgia, and more than 27% of the local business segment. For Louisiana, the losses to competition are tallied at 9% of the overall access lines and more than 18% of the business segment. Step back and think

⁶ *El Paso/PacWest/US LEC Comments* at 39-49.

⁷ *AT&T Comments* at 77; *Sprint Comments* at 3-7.

⁸ *AT&T Comments* at 77.

⁹ *Id.* at 5.

¹⁰ *AT&T Comments* at 75 (BellSouth's data "greatly inflate the amount of facilities-based competition."); *Sprint Comments* at 9.

about this. Any company that had actually suffered these kinds of dramatic share losses for such a profitable business within this small amount of time would be on the brink of financial disaster. But what does the financial picture for BellSouth Corporation and its investors reveal? BellSouth shareholders have in fact earned the highest dividends in BellSouth's history over the last 3 years. Even with the stock market volatility of this year, both generally and with respect to telecommunications more specifically, BellSouth has fared *better* than the S&P index.¹¹

AT&T provides a detailed analysis of how BellSouth overstates the amount of facilities-based competition.¹² This analysis was also provided by the Southeastern Competitive Carriers Association ("SECCA") in their Comments filed in the Georgia PSC's 271 proceeding.¹³ The state of UNE-based competition in either state is also equally limited.¹⁴ As Sprint notes:

The actual level of competition in Georgia and Louisiana came under close scrutiny during the state proceedings below. Among other commentors, SECCA affiant Joseph Gillan exposed numerous problems, both empirical and qualitative, in BellSouth's claims that the markets were irreversibly open. In light of the analysis presented by Gillan, and summarized here, BellSouth's picture of rampant local competition is nothing short of surreal.¹⁵

BellSouth is required to demonstrate that its application is in the public interest, and this Commission has required that, as part of that showing, the applicant must show that the local market is irreversibly open to competition. The Commission stated that it would not be satisfied that the public interest standard has been met unless there is an adequate factual record that the "BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."¹⁶ As the Department of Justice notes, in-region,

¹¹ *Sprint Comments* at 9.

¹² *AT&T Comments* at 76, citing *Gillan Declaration* at ¶¶ 18-27.

¹³ *SECCA GA Comments*, Affidavit of Joseph Gillan (July 16, 2001) ("*Gillan Affidavit*"). US LEC is a member of SECCA.

¹⁴ *AT&T Comments* at 78.

¹⁵ *Sprint Comments* at 12.

¹⁶ *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, ¶ 386 (1997) ("*Ameritech Michigan 271 Order*").

interLATA entry by a Bell Operating Company (“BOC”) should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.¹⁷ BellSouth has failed to make this showing for either Georgia or Louisiana.

B. The 271 Process Is Becoming Increasingly Mechanistic And Diluted

The Commentors noted how, in crafting the public interest standard, the Commission explicitly recognized that “Congress did not repeal the MFJ in order to allow checklist compliance alone to be sufficient to obtain in-region, interLATA authority.”¹⁸ The Commentors noted how BellSouth initially attempted to dilute the public interest standard by arguing that the public interest requirement is met whenever a BOC has implemented the competitive checklist.¹⁹ BellSouth also contended that the Commission’s responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market.²⁰ The Commission rejected both of these claims and reaffirmed that it will consider “whether approval of a section 271 application will foster competition in all relevant telecommunications markets (including the relevant local exchange market), rather than just the in-region, interLATA market.”²¹

¹⁷ *In the Matter of Application of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Evaluation of the United States Department of Justice at 2 (July 26, 2001); *see also*, *Ameritech Michigan 271 Order* at ¶ 382.

¹⁸ *El Paso/PacWest/US LEC Comments* at 41, *citing*, *Ameritech Michigan 271 Order* at ¶ 385.

¹⁹ *El Paso/PacWest/US LEC Comments* at 41, *citing*, *In the Matter of the Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 361 (1998).

²⁰ *Id.*

²¹ *Id.* Congress rejected an amendment that would have stipulated that full implementation of the checklist satisfies the public interest criterion. *Ameritech Michigan 271 Order* at ¶ 389.

Despite this clear language, BellSouth is still attempting to subsume the public interest analysis under considerations of checklist compliance.²² The Commission should once again unequivocally reject this overture. The Commission has given applicants substantial latitude in demonstrating checklist compliance. The Commission has allowed applicants to incorporate interconnection terms and conditions,²³ rates,²⁴ and even performance data²⁵ from another state to demonstrate checklist compliance in a particular state. The Commission has also increasingly allowed applicants to rely on promises of future compliance.²⁶ As a result, checklist compliance has increasingly become a formula where if the applicant can plug in the correct inputs it can obtain Section 271 authority. As Sprint notes:

[I]t is time that the Section 271 process go beyond the mechanistic exercise that it has become, where substantial problems are pigeonholed away, where BOC submissions are deemed ‘close enough’ (though their departure from prior standards grows larger with each application), where procedures are sacrificed to expediency and where monetary fines are deemed sufficient for filing false statements before the Commission. This is not at all what Section 271 should be about.²⁷

The Commission has deemed that this latitude is warranted. The Commentors are not here to second-guess that determination, but to merely reiterate that this is all the more reason for a viable public interest standard. As checklist compliance becomes all the more mechanistic--and

²² *AT&T Comments* at 72 (“BellSouth invites the Commission to look no further than the competitive checklist in determining whether BellSouth’s entrance into long distance would be consistent with the public interest.”).

²³ *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, (Jan. 22, 2001) ¶ 35 (“*SWBT KS/OK 271 Order*”).

²⁴ *See Id.* at ¶ 82, n. 244.

²⁵ *See Id.* at ¶¶ 35-38.

²⁶ *See, Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Dissenting Opinion of Commissioner Michael J. Copps at 8 (September 19, 2001).

²⁷ *Sprint Comments* at 22.

with 2,000 some metrics, it is inevitable that the process will only continue to grow more mechanistic--it is all the more important that a viable public interest standard be preserved.

The public interest standard will enable the Commission to look beyond the numbers and look at the qualitative aspects of the application. The Commission will be able to consider if the application, when looked at as a whole, truly promotes competition and is in the public interest. For instance, the Georgia Consultative Report is replete with references to missed metrics that the Georgia PSC did not deem to be competitively significant.²⁸ Assuming *arguendo*, that those missed metrics, in and of themselves, were not competitively significant, combined together they do take on a competitive significance.

The Commission must undertake this qualitative public interests' analysis because there are indications that the Section 271 process is not working as it was intended to open up markets. AT&T demonstrates how the grant of Section 271 authority in Texas prior to local markets being fully open has led to a decline in competition and increased local and long distance prices.²⁹ Sprint suggests even more fundamental problems with the process noting:

Section 271, as it thus far has been implemented, has not succeeded in opening local markets. The Commission's experience with the Section 271 process, beginning in 1997 with the first applications, has proven beyond doubt three facts: First, no Bell Company has found it to be in its own interests to cooperate in establishing local competition. Second, the Section 271 "carrot" provides some moderate (but limited) counterbalance to the BOC's self-interest in maintaining their monopolies. Third, the prospects of competing against Bell Companies in their region require even far greater efforts than the FCC and Congress anticipated, in terms of access to capital, technological change, and removing entry-barring dependence on Bell Company cooperation.³⁰

²⁸ See, e.g., *GA PSC 271 Order* at 90 (Pre-ordering response time for HAL/CRIS access via LENS interface is longer for CLECs but "difference has not materially impacted the competitiveness of the Georgia local market."); *Id.* at 98 ("That BellSouth has failed to return some FOCs or reject notices in a timely manner appears to have little competitive impact."); *Id.* at 156 ("Difference in average completion interval for unbundled loops loses competitive significance as a result of the study."); *Id.* at 158 (BellSouth's miss of the retail analogue for percent provisioning troubles within 30 days for xDSL<10 circuits is "competitively insignificant.")

²⁹ *AT&T Comments* at 82.

³⁰ *Sprint Comments* at 2.

The Commission needs to ensure that local markets are fully and irreversibly open prior to granting Section 271 authority. As the Commission has noted:

Section 271, however embodies a congressional determination that, in order for this potential to become a reality, local telecommunications markets must first be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market. Only then is the other congressional intention of creating an incentive or reward for opening the local exchange market met.³¹

Allowing Section 271 grants before local markets are fully open creates a real prospect of return to pre-divestiture period. As Mr. Gillan forecasts:

Not only does the level of competition today not justify BellSouth's claim that it has opened markets to entry, the most likely effect of BellSouth's gaining interLATA authority would be for it to gain even greater dominance in the future. Unless entrants are assured nondiscriminatory access to the inherited network, only BellSouth would be positioned to offer packages that combine local service with other products (such as Internet access and long distance) broadly across the market. Consequently, granting BellSouth interLATA authority will increase its market position at the very *same* time that the Act's sole financial incentive to comply with its market opening provisions is removed.³²

Promoting CLEC market entry should be a paramount goal of the Commission.

Competitive entry into local markets promotes increased choices for end users and promotes innovation and demand for services. For instance, CLECs have fueled the growth of advanced services and broadband deployment by deploying state-of-the-art networks.³³ Prior to competitive entry, the RBOCs were disinterested in advanced services and broadband deployment, now they fill airwaves advocating greater broadband deployment. The Act was designed to provide for a "pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information

³¹ *Ameritech Michigan 271 Order* at ¶ 388.

³² *Gillan Affidavit* at ¶ 7.

³³ *See Sprint Comments* at 10, n. 18.

technologies and services to all Americans by opening all telecommunications markets to competition.”³⁴ The goal of promoting competition was to “secure lower prices and higher quality services for American telecommunications consumers.”³⁵ As the House Commerce Committee Report noted:

Technological advances would be more rapid and services would be more widely available and at lower prices if telecommunications markets were competitive rather than regulated monopolies.³⁶

Competitive entry into markets has helped make the goals a reality, and the Commission has played a significant role in effecting these goals. The Commission, however, cannot ignore those goals now.

The Commission cannot deny that local competition is imperiled and that competitive exit from local markets is not in the public interest. CLECs provide the only hope for competition in local markets as RBOCs have been refusing to compete in each other’s regions. Sprint bemoans the “dearth of competition between the RBOCs” and is “unaware that any such competition exists on a significant scale today.”³⁷ AT&T suggests that it appears that Qwest has signed an agreement not to compete for business customers in BellSouth’s region.³⁸ With the long distance industry evidencing “substantial decline of . . . industry stalwarts,”³⁹ and the increasing possibility that one of the large three long distance carriers, perhaps even AT&T, will be purchased by an RBOC, the vision for the 21st century is fast becoming a return to the pre-1980s America.

³⁴ P.L. 104-104, Telecommunications Act of 1996, S. Conf. Rep. 104-230 at 1 (1996).

³⁵ P.L. 104-104, H.R. Rep. 104-204(I) at 160 (1995).

³⁶ *Id.*

³⁷ *Sprint Comments* at 9.

³⁸ *AT&T Comments* at 81.

³⁹ *Sprint Comments* at 8.

The 1996 Act was designed to provide end users with a number of competitive choices and services. As Commissioner Copps has stated:

The combination of competitive BOC entry into the interLATA market and competitive local exchange carrier (CLEC) entry into the BOC's once-dominant local market, Congress believed, would lead to significant consumer benefits in the form of lower prices, better service, and investment in new technologies. Continued BOC dominance of a state's local market, however, could undermine consumer benefits if the BOC could leverage this dominance upon entering the interLATA market.⁴⁰

If the Commission allows the Section 271 process to continue to be diluted, end users will be seeing a landscape dominated by the RBOCs each seeking to maintain their monopolies in their regions. The Commission was given the ability to prevent such a scenario through use of the public interest standard. The Commission should employ this standard to ensure that local markets are irreversibly open to competition.

C. The Public Interest Standard As A Check on Anticompetitive Practices

As part of its public interest analysis, if there is a lack of competitive entry, the Commission will examine if this lack of entry is due to "the BOC's failure to cooperate in opening its network to competitors, the existence of barriers to entry, the business decisions of potential entrants, or some other reason."⁴¹ This requirement, among other things, provides an incentive for RBOCs to cooperate with competitors and refrain from anticompetitive practices. If this check is to have any effect, the Commission has to be willing to take forceful action to address any anticompetitive practices. The Commentors propose that any finding of anticompetitive practices on the part of an RBOC by a court or regulatory body should be

⁴⁰ *Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Dissenting Opinion of Commissioner Michael J. Copps at 1 (September 19, 2001).

⁴¹ *Id.*

considered a *per se* violation of the public interest standard, and that the applicant will be denied Section 271 authority until the cessation of such practices.

The need for such a policy is quite evident in this present application. The Commentors chronicled BellSouth's anticompetitive winback practices.⁴² The Competitive Telecommunications Association ("CompTel") provides further details of BellSouth's anticompetitive practices. As CompTel describes:

Despite [the] explicit prohibition on the use of carrier change information, BellSouth unlawfully uses proprietary carrier and customer information – gained by virtue of its position as the incumbent carrier and provider of wholesale inputs and services – and shares this information with its retail operations in order to retain customers that otherwise would migrate to a competing carrier. Specifically, upon learning of a customer's imminent cancellation of service, such as through a preferred carrier change order, BellSouth routinely contacts the customer prior to the execution of the change order to attempt to retain or "win back" that customer. During these winback attempts, BellSouth maliciously disparages the competing carrier's operations and quality of service.⁴³

What is particularly troubling is the manner in which BellSouth falsely impugns the financial viability of a competitor.⁴⁴ In addition, CompTel notes that in one instance a BellSouth sales person boasted that he "can install complex new service faster than anyone else" and that he knows "shortcuts that nobody else knows."⁴⁵ If the boast is mere hyperbole, it is deceptive marketing. If the boast has any truth to it, then it is an admission that CLECs are not receiving installation service at parity.

These anticompetitive practices have engendered investigations in Alabama, Florida, Georgia and South Carolina.⁴⁶ The Georgia and Louisiana Commissions have imposed restraints

⁴² *El Paso/PacWest/US LEC Comments* at 45-46.

⁴³ *CompTel Comments* at 19.

⁴⁴ *Id.* at 20.

⁴⁵ *Id.*

⁴⁶ *Id.* at 22.

on BellSouth's marketing practices.⁴⁷ These anticompetitive practices are not mere isolated occurrences. These incidents must be viewed in the context of BellSouth's overall posture towards CLECs. BellSouth's poor provisioning and maintenance documented by Commentors coupled with the statements BellSouth makes in its marketing to customers about CLEC service quality suggest that BellSouth's lack of responsiveness to CLECs is calculated to give BellSouth a competitive advantage. WorldCom notes that the "issue that lies at the bottom" of all its specific concerns is "BellSouth's failure to respond adequately to CLEC problems."⁴⁸

The feeble state of competition in Georgia and Louisiana, when viewed in context with BellSouth's lack of responsiveness and anticompetitive practices, cannot be coincidental. BellSouth has not demonstrated that it is committed to opening up its local markets. Until it makes such a commitment, granting this application cannot be in the public interest.

II. PERVERSIVE PROVISIONING AND MAINTENANCE/REPAIR ISSUES WITH HIGH CAPACITY FACILITIES SUGGEST ENDEMIC PROBLEMS

US LEC has detailed in this proceeding BellSouth's woeful provisioning of special access facilities. US LEC noted how BellSouth was consistently returning firm order commitments beyond the designated interval, the FOC date often would not match the requested due date and the delivery date for the facilities was frequently beyond the promised date.⁴⁹ US LEC stated how it would often receive "blind FOCs" where BellSouth would promise a due date, and then at or near the due date, would say it could not meet the date. US LEC, and its customer, meanwhile had undertaken significant preparation in anticipation of the promised date.⁵⁰ US

⁴⁷ *Id.*

⁴⁸ *WorldCom Comments* at 50.

⁴⁹ CC Docket No. 01-277, Comments of El Paso Networks, LLC, PacWest Telecomm, Inc., and US LEC Corp. at 6 (October 22, 2001) ("*El Paso/PacWest/US LEC Comments*").

⁵⁰ *Id.* at 7.

LEC demonstrated how it experiences numerous outages on its facilities that continue for protracted periods.⁵¹ US LEC noted how BellSouth has conceded that many of these outages are due to human error.⁵² US LEC chronicled its frustrated efforts to get BellSouth to address the outages which severely impacted its ability to compete. US LEC noted how its experience demonstrated that this Commission must implement stringent performance measures and strong penalties in this area.⁵³

KMC Telecom (“KMC”) has noted similar problems in regard to DS-1 facilities it purchases from BellSouth as unbundled network elements. In Georgia, BellSouth missed 7.7% of DS-1 loop installs for KMC for the month of August. This came on the heels of missing 33% of DS-1 loop installs in June.⁵⁴ In Louisiana, BellSouth missed 41% of DS-1 installs for KMC in June and missed 28% of the DS-1 loop installs in August.⁵⁵ KMC notes that a significant component of this poor installation performance is a purported lack of available facilities.⁵⁶ What is particularly problematic about these lack of facilities is “the manner in which BellSouth fails to verify the existence of facilities.”⁵⁷ As KMC describes:

The procedures that BellSouth has in place are simply insufficient to provide an accurate and reliable order confirmation since they fail to verify the existence of adequate facilities at the appropriate time. Upon receipt of a CLEC order, BellSouth will conduct a cursory check of its records, confirm the order and *then*, just prior to the install, verify that the necessary facilities exist. In many instances, BellSouth records will indicate that a satisfactory circuit exists, only to be proven incorrect when the time comes to turn up the circuit. This leads to a

⁵¹ *Id.* at 8.

⁵² *Id.* at 9.

⁵³ *Id.* at 12-13.

⁵⁴ CC Docket No. 01-277, Comments of KMC Telecom at 3-4 (October 22, 2001) (“*KMC Comments*”)

⁵⁵ *Id.*

⁵⁶ *Id.* at 5.

⁵⁷ *Id.*

delayed install and provides inadequate notice to both the CLEC and the end user that the change in service providers will not take place as scheduled.⁵⁸

KMC noted that when it finally gets the DS-1 loop, outage problems begin. In Georgia, for the month of August, 7% of KMC's DS-1 loops failed within 30 days of BellSouth turning up the loop. In June, 25% of DS-1 and higher loops failed within 30 days. In Louisiana, for the month of June, 14% of KMC's DS-1 loops failed within 30 days.⁵⁹ These outages were not one time occurrences. As KMC describes:

BellSouth's own reported performance numbers indicate that over *two-thirds* of KMC's DS-1 loops in Georgia that suffered a trouble in August had a prior trouble, while 42% of KMC's DS-1 loops with a trouble in Louisiana had a prior trouble. In fact, *three-fourths* of the Georgia DS-1 circuits in July suffered from that same problem, while nearly half of KMC's DS-1 loops suffered from a prior trouble in Louisiana.⁶⁰

KMC also described the failure of BellSouth technicians to follow prescribed procedures and that BellSouth has admitted that "it had not investigated whether its technicians were following the prescribed procedures."⁶¹

KMC, thus, is experiencing similar problems to what US LEC has experienced in regard to DS-1 facilities. The only difference is that one carrier is ordering these facilities as UNEs and the other is ordering them as special access facilities. Regardless of how the facilities are characterized, CLECs are enduring pervasive problems in the provisioning and repair of the facilities. What is particularly troubling is the fact that these deficiencies are not being captured in performance metrics. Cbeyond notes that there "are no established performance measures for

⁵⁸ *Id.* (emphasis in original).

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* (emphasis in original).

⁶¹ *KMC Comments* at 7.

DS1 UNE combinations, DS1 interoffice channels, or DS1 local channels.”⁶² Since the Commission has heretofore declined to evaluate special access performance, BellSouth is able to provision these facilities with impunity. Clearly, the lack of performance measures and penalties is reflected in BellSouth’s substandard performance. In fact, BellSouth’s provisioning of digital facilities has largely flown below the radar screen. AT&T notes that the KPMG test “evaluated only six UNEs for ordering, provisioning, and billing activities and did not include digital UNEs.”⁶³

BellSouth’s failure to provide these vital high-capacity facilities cannot go unchecked. The Commission should mandate that BellSouth meet appropriate performance standards in regard to the provisioning and repair of high-capacity facilities. These standards should apply regardless of whether the CLEC orders the facilities as UNEs or special access facilities. As Commentors noted in their initial Comments, the special access/UNE distinction is growing increasingly irrelevant. CLECs are often forced to purchase special access facilities due to problems obtaining the facilities as UNEs.⁶⁴ As the Department of Justice notes, “some facilities-based CLEC lines that are not being provided over UNE-loops are, in fact, being provided over special access lines from BellSouth.”⁶⁵ The Commission’s disinclination to monitor provisioning of these lines means that a vital segment of the local service market will remain unmonitored. Unless the Commission actively monitors the provisioning of both special

⁶² CC Docket No. 01-277, Comments of Cbeyond Communications, LLC at 6 (October 22, 2001) (“*Cbeyond Comments*”).

⁶³ CC Docket No. 01-277, Georgia Public Service Commission’s Consultative Report at 79 (October 19, 2001) (“*GA PSC 271 Order*”), citing, *AT&T Norris Affidavit* at ¶ 75.

⁶⁴ See *Cbeyond Comments* at 15.

⁶⁵ *DoJ Evaluation* at 9.

access facilities and high capacity UNEs, BellSouth will have no incentive to improve its woeful performance.⁶⁶

III. BELLSOUTH FAILS TO SATISFY CHECKLIST ITEM 2 IN REGARD TO OSS

The consensus of the comments is that instead of rectifying the OSS problems that this Commission found problematic with BellSouth's first three applications, these problems remain and new problems have surfaced. The Commission had explicitly directed BellSouth to remedy deficiencies identified in prior Orders before filing a new Section 271 application.⁶⁷ Yet as AT&T correctly observes:

[A]lthough BellSouth has made some improvements in its systems since the *Louisiana II Order*, the reality is that it has fixed only a handful of the many problems that the Commission identified. Moreover, BellSouth violates its OSS obligations in many *additional* ways that the Commission did not address⁶⁸

BellSouth was given a clear roadmap for compliance with Checklist Item 2, and has had three years to achieve this compliance, but has failed to do so. What is particularly troubling is the fact that new problems have arisen. As WorldCom observes:

[I]f the Commission were to approve this application with the numerous critical defects in BellSouth's OSS, the Commission would be establishing a new low for permissible OSS. Never before have OSS defects of this magnitude that infect the systems in Georgia been unremedied at the time of section 271 approval.⁶⁹

⁶⁶ PacWest and US LEC applaud recent reports that the Commission will soon initiate a proceeding to establish performance standards for ILEC provision of interstate special access service. Obviously, this future proceeding does not correct what is relevant to the instant application -- BellSouth's current deficient performance.

⁶⁷ CC Docket No. 01-277, Comments of AT&T Corp. at 3 (October 19, 2001) ("*AT&T Comments*"), citing, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 5 (1998) ("*Second Louisiana Order*").

⁶⁸ *AT&T Comments* at 16; see also, CC Docket No. 01-277, Comments of WorldCom, Inc. at 2 (October 22, 2001) ("*WorldCom Comments*").

⁶⁹ *WorldCom Comments* at i.

As will be discussed in more detail below, it is vital that the Commission be extra vigilant in ensuring that all the OSS problems are addressed and corrected prior to granting approval of this application. BellSouth will surely attempt to use Georgia as its anchor state for OSS.

A. Functionality and Capacity of OSS

Normally, the overall commercial usage of BellSouth's OSS as reflected through performance data would provide an accurate insight into the overall functionality of the OSS. There are, however, two threshold concerns about BellSouth's reporting of this data. Numerous commentors have raised concerns about the validity of the data.⁷⁰ The Georgia PSC's response was that "given the relative newness of these measures and given that BellSouth is reporting performance data on more than 2,200 sub-metrics each month, it is unrealistic to expect 'perfection' in BellSouth's performance reporting."⁷¹ The relative newness of the measures, however, warrant that any issues as to the measures, particularly in regard to lost and missing data, be resolved to ensure that those measures provide accurate insight into BellSouth's performance. Plus with so many metrics, it is easy for lost orders to go unnoticed. The Georgia PSC also takes comfort in the fact that BellSouth is addressing the issues.⁷² BellSouth's application is based on this data, however, and these issues should be addressed first, and a new three month set of data be produced, prior to basing a section 271 approval on such data.

Third-party testing in Florida has revealed that the problems with data are not "isolated" problems as the Georgia PSC would like to believe.⁷³ As AT&T notes:

KPMG has already found serious discrepancies concerning BellSouth's metrics and data integrity problems in its Florida third-party testing – and BellSouth has

⁷⁰ *AT&T Comments* at 31; *Birch Comments* at 13; see also, *ElPaso/PacWest/US LEC Comments* at 22-23; *GA PSC 271 Order* at 81 (Noting that Covad also raised concerns about the integrity of the data).

⁷¹ *GA PSC 271 Order* at 130.

⁷² *Id.*

⁷³ See *DoJ Evaluation* at 33.

not yet corrected them. The numerous errors, discrepancies and inconsistencies in BellSouth's reported performance data – and BellSouth's seemingly unending 'corrections' of them – simply confirm that the data cannot be taken at face value. Indeed, BellSouth's own application acknowledge that it has made numerous miscalculations of reported data. Because the reported data is not representative of the true population, the statistical compliance tests performed by KPMG are unreliable.⁷⁴

Performance data can provide a vital insight into BellSouth's OSS, but only when the integrity of the data is assured. There is no such assurance here.

There are also concerns that the performance metrics are not accurately reflecting BellSouth's performance. The Department of Justices raises serious concerns about the newness of the performance measures and how many of the problems that such newness causes have yet to be resolved.⁷⁵ The Department of Justice observes that the problems that have arisen "cause concern about the reliability of the performance that BellSouth reports in this application for both Georgia and Louisiana."⁷⁶ As AT&T notes, "many of the performance measures used by BellSouth are ill-defined or otherwise fail to capture actual performance."⁷⁷ WorldCom recites a litany of problems that are not adequately reflected in the performance metrics. For instance, BellSouth uses a two service order process to handle customer migrations. BellSouth uses a "D" order to disconnect the customer's old service and a "N" order to establish new service with the CLEC.⁷⁸ If BellSouth does not properly sequence these orders, it can result in the loss of dial tone for the customer. WorldCom experienced significant problems with such loss of dial tone for its new customers.⁷⁹ This problem was not being captured in the performance metrics

⁷⁴ *AT&T Comments* at 32.

⁷⁵ *DoJ Evaluation* at 30-31.

⁷⁶ *Id.*

⁷⁷ *Id.* at 32.

⁷⁸ *WorldCom Comments* at 5.

⁷⁹ *Id.* at 5-7.

because of the manner in which BellSouth defined the applicable metric and the fact that BellSouth excludes from the metrics any trouble reports it deems were caused by the customer's premises equipment without any verification of such assessment.⁸⁰

WorldCom also notes the inadequacy of BellSouth's performance metrics in tracking notifiers such as completion notices, FOCs, and reject notices.⁸¹ The Commission had already previously raised concerns about the ability of BellSouth's performance metrics to track accurately the average completion interval.⁸² BellSouth's performance metrics are still deficient in this area and fail to provide insight into how long it takes for BellSouth to install service.⁸³

In areas where BellSouth's OSS performance is most problematic, such as flow through and FCOs/rejects, the performance measures are less than stringent and are ill-equipped to ensure adequate performance. For instance, BellSouth is only required to have 85% of eligible UNE orders flow-through.⁸⁴ This is below the standards set in the Verizon applications and the SBC applications.⁸⁵ BellSouth is even failing to meet this relaxed standard.⁸⁶ In regard to "partially mechanized orders,"⁸⁷ BellSouth is only required to return 85% of FOC and reject responses within 18 business hours. This interval was reduced to 10 business hours starting with the month of August, but the data BellSouth has submitted in support of this application is based on the 18 hour standard.⁸⁸ This standard is much lower than the standard SBC was held to, which was the

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 11.

⁸² *Id.* at 47, citing, *South Carolina Order* at ¶ 134.

⁸³ *Id.*; see also, CC Docket No. 01-277, Comments of Birch Telecom at 28 (October 22, 2001) ("*Birch Comments*").

⁸⁴ *Birch Comments* at 27.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Orders that involve manual processing of electronically submitted orders.

⁸⁸ *Birch Comments* at 25.

return of 95% of FOC and reject notices for partially mechanized orders within five business hours.⁸⁹ Once again, this is an area in which BellSouth's performance has been problematic and being held to a lower standard will provide no incentive for improved performance.⁹⁰ The Department of Justice states that it "is concerned about the validity of a number of measures that should be revised to provide regulators and competitors with meaningful performance data."⁹¹ These measures include those pertaining to OSS availability, rejected orders, flow-through rates, jeopardy notices, hot cut timeliness, order completion interval, and trunk group performance.⁹²

As the Commentors noted in their initial Comments, if BellSouth does not like a metric, it will change the metric. This observation is echoed by AT&T which notes that BellSouth, without notice or authorization, modified performance measures ordered by the Georgia PSC and failed to comply with certain GA PSC directives relating to performance measures.⁹³

Perhaps the most troubling fact about BellSouth's performance is that its less-than-adequate performance is actually inflated. AT&T discovered that certain BellSouth Local Carrier Service Centers ("LCSC") were giving priority to LSRs from Georgia over LSRs from other states.⁹⁴ As the Department of Justice determined:

The Department is also gravely concerned by BellSouth's admission that it did not process test orders as it would have during the normal course of business. Rather, these orders were identified as test orders and processed with special management supervision. Such actions should not be condoned as they undermine the integrity of the Georgia test results as a whole.⁹⁵

⁸⁹ *Id.*

⁹⁰ *See El Paso, PacWest and US LEC Comments* at 26.

⁹¹ *DoJ Evaluation* at 35.

⁹² *Id.*

⁹³ *GA PSC 271 Order* at 82, *citing AT&T's Bursh Affidavit* at ¶¶ 5-18.

⁹⁴ *GA PSC 271 Order* at 122, *citing, AT&T September 12, 2001 Petition* at 5.

⁹⁵ *DoJ Evaluation* at 5, n. 14 (citations omitted).

Thus, it is highly likely that the quality of performance will drop if BellSouth is given 271 authority in these two states. BellSouth will then place priority on orders for states in which Section 271 review is pending, and the quality of service in Georgia and Louisiana will suffer.

B. Pre-Ordering/Ordering

It is uncontroverted that BellSouth's retail division starts out with a tremendous advantage at the pre-ordering stage due to parsed CSRs. Due to the lack of parsing, CLECs have to "manually re-enter information from a CSR into the local service order – a process that is more time-consuming, costly, and susceptible to error than would be the case if the CLEC could parse the information and populate it electronically into the local service order."⁹⁶ BellSouth's retail division has full parsing capability in place thereby mitigating the risk of delay and error.⁹⁷ CLECs instead have to type all the information into an order.⁹⁸ It is hard to fathom how the Georgia PSC could determine that is "nondiscriminatory", particularly since the Georgia PSC failed to elaborate on why it is nondiscriminatory.⁹⁹

Of course, parsed CSRs are a moot point if the very systems needed to access the ordering information are down. Birch notes that BellSouth's primary OSS is the Telecommunications Access Gateway ("TAG"). Birch chronicles 30 incidents of TAG failures that were not reported in BellSouth's outage reports.¹⁰⁰ This data is coupled with the outages in the LENS interface that CLECs have been experiencing.¹⁰¹ As the Department of Justice found:

CLECs operating in the BellSouth region complain of significant service outages, including slow or degraded service. By contrast, BellSouth reports virtually no

⁹⁶ *AT&T Comments* at 20.

⁹⁷ *Id.*

⁹⁸ *See WorldCom Comments* at 22.

⁹⁹ *GA PSC 271 Order* at 88.

¹⁰⁰ *Birch Comments* at 30.

¹⁰¹ *El Paso/PacWest/US LEC Comments* at 28.

downtime for any of its interfaces for June, July, and August, despite the fact that at least one CLEC could place only a fraction of the orders it usually submits.¹⁰²

As the Department of Justices goes on to note, “when electronic interfaces are unavailable to CLECs, they cannot submit orders for new customers or initiate changes to existing services via those interfaces or use them to access information needed to respond to customer inquiries.”¹⁰³

Once these hurdles are cleared, the problems really begin. AT&T observes that more than 25% of all electronically submitted LSRs fall out for manual processing “because of design decisions by BellSouth or BellSouth system errors.”¹⁰⁴ This is in contrast to the nearly 100% flow-through capability of BellSouth’s own retail operations.¹⁰⁵ The average total flow-through rates for business orders in the April-June 2001 period was only 39-42%, and for UNE orders, it was only 57-63%.¹⁰⁶ Not only is this disparity evidence of nondiscriminatory access in and of itself, but those orders that fall out are subject to longer intervals for returns of FOCs and reject notices.¹⁰⁷ BellSouth must return 97% of mechanized rejects within one hour, but if the order falls out of electronic processing, it must only return 85% of manually processed rejects within 10 hours.¹⁰⁸ Thus, while BellSouth can provide delivery information to its customers in real time, CLECs will have to wait to provide such information. Manual processing also leads to protracted due dates, so the CLEC customer will have to wait longer for its service.¹⁰⁹ The manually processed orders are also prone to more errors, thus leading to the CLEC customer

¹⁰² *DoJ Evaluation* at 26.

¹⁰³ *DoJ Evaluation* at 13.

¹⁰⁴ *AT&T Comments* at 21.

¹⁰⁵ *Id.* At 22.

¹⁰⁶ *GA PSC 271 Order* at 100.

¹⁰⁷ *AT&T Comments* at 22.

¹⁰⁸ *WorldCom Comments* at 17; *see also, DoJ Evaluation* at 20.

getting service that it did not order and not getting the service that it did order.¹¹⁰ In Florida, KPMG found significant flow-through issues. From May to July 2001, only 47 to 56% of UNE orders flowed through.¹¹¹ The Florida test also suggested that BellSouth's flow-through numbers may be significantly overstated.¹¹² WorldCom also observed that BellSouth was characterizing certain orders as flowing-through even though the orders were actually manually processed.¹¹³ Birch also contends that BellSouth overstates the flow-through performance it provides to Birch.¹¹⁴

CLECs have also been experiencing problems in regard to the notifiers it receives pertaining to the status of their orders. These notifiers take the form of firm order commitments, reject notices, or completion notices. In many cases, BellSouth does not deliver the notifier at all.¹¹⁵ KPMG created an exception for missing notifiers in its third-party testing in Georgia because BellSouth did not send a completion notice on 14% of EDI orders and 16% of TAG orders for which KPMG expected a completion notice.¹¹⁶ Despite this high failure rate, KPMG mysteriously closed this exception without adequate explanation.¹¹⁷ KPMG has also opened an

¹⁰⁹ *AT&T Comments* at 22; *see also DoJ Evaluation* at 14 (Manual processing “increases the expense of CLEC ordering, lengthens the time required to place customers in service, and creates errors that cause service requests to be improperly rejected or to be provisioned incorrectly.”)

¹¹⁰ *Id.* Indeed, BellSouth has attributed many of its OSS problems to manual mistakes. *WorldCom Comments* at 15. Manual errors led to the return of inaccurate and belated FOCs and rejects. *Id.* at 16. *See also DoJ Evaluation* at 13 (“orders that are manually processed are more likely to be provisioned incorrectly, and manual processing prevents CLECs relying on their own automated systems and slows CLECs’ response to customer inquiries.”)

¹¹¹ *WorldCom Comments* at 17.

¹¹² *Id.*

¹¹³ *Id.* At 18.

¹¹⁴ *Birch Comments* at 8; *see also, DoJ Evaluation* at 17.

¹¹⁵ *WorldCom Comments* at 8.

¹¹⁶ *Id.* At 10.

¹¹⁷ *Id.*

exception on this in Florida.¹¹⁸ As WorldCom astutely notes, unless this issue is resolved, when commercial volumes increase, the amount of missing notifiers will increase. This is what happened in New York, and the same potential exists in Georgia.¹¹⁹

When the notifiers are actually issued, they are often late.¹²⁰ Many orders are also erroneously rejected.¹²¹ BellSouth often “rejects a significant amount of CLEC orders that it should accept for processing.”¹²² WorldCom notes that it has experienced a much higher reject rate from BellSouth as compared to other RBOCs.¹²³ WorldCom describes the effects that problems with notifiers create:

As the Commission knows, the impact of delayed and missing notifiers on CLECs is severe. The NYPSC found that Verizon’s missing notifiers significantly delayed customers’ ability to move their service to CLECs. If CLECs do not receive a reject, for example, they do not know that they must clarify an order and re-transmit it. Similarly if they do not receive a completion notice, they must assume that BellSouth has not yet completed the order. Thus, WorldCom has been unable to bill (or process maintenance requests for) the hundreds of customers for whom notifiers have been missing since July, and some of these customers were never migrated to WorldCom in the first place.¹²⁴

It is therefore puzzling how the GA PSC could conclude that the fact that “BellSouth has failed to return some FOCs or reject notices in a timely manner ‘appears to have little competitive impact.’”¹²⁵

An issue that was particularly of concern to this Commission is whether BellSouth provides equivalent access to due dates. The Commission stated that it would closely examine

¹¹⁸ *Id.*

¹¹⁹ *Id.* At 9-10.

¹²⁰ *See Georgia PSC 271 Order* at 73 (Noting AT&T and NewSouth claims about untimely FOCs).

¹²¹ *Id.* At 74 (Noting AT&T, WorldCom, and KMC problems with rejected orders).

¹²² *DoJ Evaluation* at 19.

¹²³ *WorldCom Comments* at 28.

¹²⁴ *Id.* At 11.

¹²⁵ *GA PSC 271 Order* at 98.

this issue in future BellSouth applications.¹²⁶ AT&T notes “that BellSouth *still* fails to provide CLECs with a ‘due date calculator’ that accurately and reliably provides due dates.”¹²⁷ Instead, CLECs “get due dates that are often erroneous and far later than those requested by CLECs – ensuring that CLEC customers will often receive service at a later time than those requested by CLECs.”¹²⁸ The Georgia PSC conceded that there could be problems with obtaining due dates on orders that fall out for manual handling. The Georgia PSC concluded, however, that service requests that fall out for manual handling are impacted the same with respect to due dates whether they originate from a BellSouth retail customer or a CLEC customer.”¹²⁹ The GA PSC thus concluded that “this does not result in discrimination.”¹³⁰ However, as shown above, BellSouth’s retail division experiences much better flow-through so CLECs and their customers are adversely impacted.

C. The Florida Evaluation Will Provide A Better Insight Into BellSouth’s OSS

Given the litany of problems with BellSouth’s OSS chronicled in this proceeding, the Commission should find that BellSouth fails to comply with Checklist Item 2 and require BellSouth to fix these problems before refiling in Georgia and Louisiana. The Commission should then review the more stringent and comprehensive examination of BellSouth’s OSS by the Florida Public Service Commission before determining BellSouth’s OSS checklist compliance. If despite all these problems, the Commission finds BellSouth’s OSS to be checklist compliant, it should limit its finding to Georgia and Louisiana so as not to undermine or devalue

¹²⁶ *AT&T Comments* at 21, *citing, Second Louisiana Order* at ¶ 106.

¹²⁷ *AT&T Comments* at 21 (emphasis in original).

¹²⁸ *Id.*

¹²⁹ *GA PSC 271 Order* at 89.

¹³⁰ *Id.*

the Florida test. The Commission should not allow BellSouth to use Georgia as an anchor state in the manner it allowed Verizon and SBC to use New York and Texas as anchor states.

In their initial Comments, Commentors asked that the Commission defer to the Florida PSC's OSS evaluation.¹³¹ Other commenting parties have made the same request. As AT&T argues:

[a]lthough one would hardly know it by reading BellSouth's application, the largest and most comprehensive body of evidence regarding the current performance of BellSouth's OSS comes from tests underway in Florida. And, as detailed below, no matter how one slices the Florida data, it removes any doubt that BellSouth's OSS remains harshly discriminatory.¹³²

As AT&T adds, "if this Commission were to overlook the existing, glaring deficiencies in those OSS on vague promises of future improvement, it would cut the legs out from under the Florida commission's pro-competitive efforts."¹³³ Likewise, WorldCom notes that "approval of the defective OSS in Georgia would undermine the impressive efforts of the Florida Commission to carry out a much more credible OSS testing process than was undertaken in Georgia."¹³⁴ As WorldCom adds, approval of Georgia as a model would severely impede the possibility of viable local competition in the entire BellSouth region.¹³⁵ While the exhaustive OSS evaluations in New York and Texas could provide the Commission some comfort in using these states as anchors, the Georgia process provides no such assurance.

The Georgia OSS evaluation is lacking in significant areas. As the Department of Justice observes:

¹³¹ *El Paso/PacWest/US LEC Comments* at 21.

¹³² *AT&T Comments* at 8.

¹³³ *Id.* at 10.

¹³⁴ *WorldCom Comments* at i.

¹³⁵ *Id.*

Although the Georgia KPMG test provides some evidence of the functionality and operability of BellSouth's OSS, the test has significant limitations. First, the Georgia test was limited in scope. Although the Commission ultimately required some additional testing and other improvements, a number of key areas remained outside the parameters of the test. Second, unlike in New York, in Georgia KPMG did not draft the Master Test Plan. Third, a number of Georgia test 'exceptions' appear to have been closed without adequate verification that the problems have been resolved. Finally, KPMG has not completed the metrics testing ordered by the Georgia PSC.¹³⁶

Among key areas not evaluated were "maintenance and repair and billing work centers" and training account team personnel."¹³⁷ Given the problems US LEC has experience in regard to maintenance and repair as well as difficulties with escalation of problems, these omissions in testing are very troubling.

The Florida test gives the third party tester more independence, has broader participation by affected CLECs, and "has been substantially more comprehensive and rigorous than the testing conducted in Georgia."¹³⁸ The Florida evaluation is looking at aspects of BellSouth's OSS that the Georgia review disregarded. Of the 94 open exceptions and observations in the Florida test as of October 5, 2001, 64% cover matters that were not tested in Georgia.¹³⁹ The Florida test is also uncovering serious deficiencies that were closed out in Georgia.¹⁴⁰ If BellSouth attempts to rely on region-wide OSS, then it must demonstrate that these open issues in Florida have been adequately addressed and resolved. As the Department of Justice notes, "requiring BellSouth to provide nondiscriminatory access to its OSS before this application is granted is important particularly because its first successful filing may well serve as the

¹³⁶ *DoJ Evaluation* at 5.

¹³⁷ *Id.*

¹³⁸ *AT&T Comments* at 18.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

benchmark for evaluation of its OSS in states regionwide.”¹⁴¹ The Department of Justice went on to conclude:

The Florida test is broader in scope and promises to provide a more robust assessment of BellSouth’s OSS than did the Georgia OSS test. Indeed, KPMG’s OSS test is identifying problems that were not detected during the Georgia OSS test – problems that BellSouth is working to fix. The Commission should be attentive to information generated by the Florida test as well as information about BellSouth’s ability or willingness to fix any problems identified in Florida.¹⁴²

The Commentors urge the Commission to take this a step further. Given BellSouth’s insistence that its OSS is region-wide, the Commission should wait until the Florida PSC has given BellSouth’s OSS a passing grade and BellSouth has fixed all the problems identified in the Florida test before approving any application for other BellSouth states.

IV. BELLSOUTH FAILS TO PROVIDE ADEQUATE NUMBER PORTABILITY IN VIOLATION OF CHECKLIST ITEM 11

The Commentors noted in their initial comments that CLEC customers have experienced significant problems with BellSouth’s implementation of number portability, including reassignment of telephone numbers, duplicate billing by BellSouth, loss of inbound service, and problems with partial ports of service.¹⁴³ The Commentors also noted how the performance data that BellSouth reports show that there are clearly problems with LNP. The Commentors also observed how BellSouth refuses to pay CLEC penalties imposed by the Georgia Public Service Commission for failure to meet these metrics and instead allegedly places the amount in escrow. CLECs have yet to be notified where the money is being escrowed, or the amounts being

¹⁴¹ *DoJ Evaluation* at 3.

¹⁴² *Id.* At 7.

¹⁴³ *El Paso/PacWest/US LEC Comments* at 14-17.; *See AT&T Comments* at 33.

escrowed.¹⁴⁴ In addition, BellSouth has taken the performance data supporting this metric and the resulting penalty amounts as to LNP metrics off its website, which is clearly another attempt to mask poor performance. This makes it impossible to monitor whether BellSouth is complying with LNP metrics.¹⁴⁵

Numerous issues have been raised by other parties concerning BellSouth's failure to implement fully number portability. AT&T notes how its business customers lost the ability to receive calls from BellSouth customers because BellSouth failed to perform translation work on its switch at the time the number is ported.¹⁴⁶ KMC noted that BellSouth's provision of number portability often results in a partial disconnect,, leaving the end user unable to receive calls approximately 20% of the time.¹⁴⁷ AT&T also observes how BellSouth has difficulty porting a subset of a customer's numbers. To remedy this, AT&T had to develop a manual work-around to ensure BellSouth does translation work on the due date.¹⁴⁸

US LEC has had to rely on similar work-around procedures to deal with BellSouth's failures in regard to number portability. When BellSouth changes the facility due date, it often fails to link the number portability order associated with the facility with the change in the facility due date. This can result in the customer being taken out of service when the number is ported prior to the facility being delivered. As a result, US LEC has implemented a policy which delays entering the Local Service Request into BellSouth's system until it can be assured that the FOC date is met and the facility delivered. Should BellSouth meet its FOC date, the facility sits for some period of time unused by the customer and paid for by US LEC. This is the penalty US

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See GA PSC 271 Order* at 199.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

LEC pays for BellSouth's unreliability.¹⁴⁹ CLECs should not have to go through such machinations, and would not have to if BellSouth provided reliable number portability. AT&T also shows how BellSouth will erroneously reassign a number ported to a CLEC customer to a new BellSouth line, and how this rarely happens to BellSouth customers.¹⁵⁰

Number portability was another one of the deficiencies found by this Commission in regard to BellSouth's prior applications.¹⁵¹ Once again, BellSouth has had three years to sort these issues out. The Georgia PSC notes many missed metrics in regard to LNP, but glosses over them stating that "as a general rule" BellSouth provides number portability in a "reasonably accurate and timely manner."¹⁵² Assuming *arguendo* that missing so many metrics still allows BellSouth to be "reasonably" close, "reasonably" close is not the standard, particularly in an area where BellSouth has been historically deficient. The Georgia PSC admits it "remains concerned with the whole LNP process."¹⁵³ Its solution is to study the matter further and perhaps discard such metrics as LNP disconnect timeliness, an area in which its performance is particularly problematic.¹⁵⁴ The Commentors fail to see how discarding metrics will improve BellSouth's performance. These performance deficiencies are particularly troubling because as the Commission has noted number portability is essential to meaningful competition and provides consumers flexibility in the way they use their telecommunications services.¹⁵⁵

¹⁴⁹ *El Paso/PacWest/US LEC Comments* at 14-17.

¹⁵⁰ *GA PSC 271 Order* at 199..

¹⁵¹ *Second Louisiana Order* at ¶ 279.

¹⁵² *GA PSC 271 Order* at 202.

¹⁵³ *Id.*

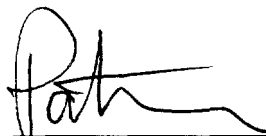
¹⁵⁴ *Id.*

¹⁵⁵ *AT&T GA Reply Comments* at 49, citing, *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Further Notice of Proposed Rulemaking, FCC 96-286, 11 FCC Rcd. 8352, ¶ 28 (1996).

V. CONCLUSION

For the foregoing reasons, PacWest Telecom, Inc. and US LEC Corp. urge the Commission to deny BellSouth's Application for Provision of In-Region InterLATA Services in Georgia and Louisiana.

Respectfully submitted,



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Dated: November 13, 2001

CERTIFICATE OF SERVICE

I, Anita Goff, hereby certify that on November 13, 2001, I caused to be served upon the following individuals the Reply Comments of PacWest Telecomm, Inc., and US LEC Corp. in CC Docket 01-277:

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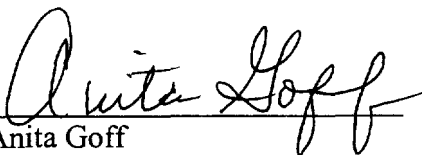
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